

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

John J. Sweeney, Jr.

v.

Civil No. 12-cv-276-SM

New Hampshire State Prison et al.

O R D E R

Before the court is Sweeney's motion (doc. no. 16) seeking to withdraw a discrimination claim raised in his complaint in this matter (doc. nos. 1, 7, 9 and 11). The court construes the instant motion (doc. no. 16) as a motion to amend the complaint to delete the discrimination claim, filed pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.

Discussion

Rule 15(a) provides, in pertinent part, that the court "should freely give leave [to amend a pleading] when justice so requires." See Fed. R. Civ. P. 15(a)(2). In its December 18, 2012, report and recommendation (doc. no. 12) ("December 18 R&R"), this court recommended dismissal of a claim that defendants discriminated against Sweeney by denying him parole. Sweeney states that his claim was misunderstood, and that he

therefore seeks to delete the discrimination claim as construed by the court in the December 18 R&R.

As there is no prejudice to any party, the motion to delete the discriminatory denial of parole claim from this action is granted. The recommendation of dismissal of that claim in the December 18 R&R is vacated, as the granting of the instant motion renders that recommendation moot.

Conclusion

For the foregoing reasons, Sweeney's motion to amend his complaint to delete the discriminatory denial of parole claim (doc. no. 16) is granted. The recommendation in the December 18 R&R to dismiss that claim is vacated.

SO ORDERED.

A handwritten signature in black ink, appearing to be 'Landya McCafferty', written over a horizontal line.

Landya McCafferty
United States Magistrate Judge

January 4, 2013

cc: John J. Sweeney, pro se

LBM:jba